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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,892	07/14/2003	Edward R. diGirolamo	4782-031	6857

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EXAMINER

CANFIELD, ROBERT

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,892

Applicant(s)

DIGIROLAMO ET AL.

Examiner

Robert J. Canfield

Art Unit

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-10 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10 and 15-27 is/are rejected.
- 7) ☒ Claim(s) 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

1. Applicant's argument concerning the Corwin reference teaching the use of prongs or screws has been found persuasive. Accordingly, the finality of the last Office action is withdrawn. This Office action is in response to the Appeal Brief filed 01/20/06. Claims 1-4, 7-10, and 15-28 are pending. Claims 5, 6, and 11-14 have been canceled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 7-10 and 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,816,008 to Hohmann in view of U.S. Patent 6,105,332 to Boyadjian.

Hohmann provides brick wall 20, studs 24, wallboard 16, ties in figures 2 and 5, plate 50/150, fastener openings for fasteners 48/148, holder/raised surface 52/152, freely movable ties 42/142, slot/retainer 56/156 and ribs 144.

Hohmann fails to provide a series of triangular shaped spikes cut out from the plate 50/150 and bent outwardly from the plate to least partially secure to the plate to the wallboard.

Boyadjian teaches that at the time of the invention it was know to provide a series of triangular shaped spikes 36 cut out from a plate and bent outwardly from the plate to least temporarily/partially secure the plate prior to inserting fasteners 40 through openings 38 in the plate.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plate of Hohmann could have also been provided with a series of triangular shaped spikes 36 cut out from the plate and bent outwardly from the plate as taught by Boyadjian, to at least partially secure the plate to a wall board prior to inserting fasteners 48/148 through openings in the plate. It would have been obvious because it is suggested by Boyadjian to use triangular shaped tangs 36 to temporarily or partially secure a plate prior to using screws or nails to more permanently secure a plate (column 3 lines 50+). The number of spikes used (at least four) is a choice of design which would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized the number of spikes chosen could have been varied depending on design choice of the plate and spike size. It would have been nothing other than obvious engineering design practices.

4. Claims 1, 2, 7-10,15-18, 20-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,955,172 to Pierson in view of U.S. Patent 6,105,332 to Boyadjian.

Pierson provides brick 16 wall, studs 14, wallboard 13, plate 20, fastener openings 40 for fasteners 42, holder/raised surface/retainer/slot 21,22, and freely movable ties 12/70. Figure 5 provides a tie having transverse ribs and notches at an inner end for fitting within an elongated slot in a raised surface of a plate as shown in figure 2.

Pierson fails to provide a series of triangular shaped spikes cut out from the plate 20 and bent outwardly from the plate to least partially secure the plate to the wallboard.

Boyadjian teaches that at the time of the invention it was know to provide a series of triangular shaped spikes 36 cut out from a plate and bent outwardly from the plate to temporarily/partially secure the plate prior to inserting fasteners 40 through openings 38 in the plate.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plate 20 Pierson could have also been provided with a series of triangular shaped spikes 36 cut out from the plate and bent outwardly from the plate as taught by Boyadjian, to at least partially secure the plate to a wall board prior to inserting fasteners 42 through openings in the plate. It would have been obvious because it is suggested by Boyadjian to use triangular shaped tangs 36 to temporarily/partially secure a plate prior to using screws or nails to more permanently secure the plate. The number spikes used (at least four) is a choice of design which would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized the number of spikes chosen could have been varied depending on design choice of the plate and spike size. It would have been nothing other than obvious engineering design practices.

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5. Claims 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,955,172 to Pierson in view of U.S. Patent 6,105,332 to Boyadjian as modified above, further in view of U.S. Patent 4,206,577 to Moriez et al.

Pierson as modified by Boyadjian provides each of the elements of these claims as noted above except that the tie has an L-shape.

Moriez teaches at the time of the invention it was known to use L-shaped ties 14 in the claimed environment.

It would have been obvious at the time of the invention to one having ordinary skill in the art that an L-shaped tie such as that taught by Moriez at 14 could have been used with the base plate and retainer of Pierson. An L-shaped tie would have been an obvious choice of tie to use when working with different bricks such as those having the shape taught by Moriez.

6. Claims 1-4, 7-10, 15 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,373,314 to Allan in view of U.S. Patent 6,105,332 to Boyadjian.

Allan provides brick wall W, studs F, wallboard (column 4, lines 14-19), plate 12, fastener openings 17/18 for fasteners 50, 51, holder/raised surface/retainer/slot 26, 27 and freely movable V-shaped ties with inwardly turned arms 44, 45.

Allan fails to provide a series of triangular shaped spikes cut out from the plate 20 and bent outwardly from the plate to least partially secure to the plate to the wallboard.

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Boyadjian teaches that at the time of the invention it was known to provide a series of triangular shaped spikes 36 cut out from a plate and bent outwardly from the plate to at least temporarily/partially secure the plate prior to inserting fasteners 40 through openings 38 in the plate

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plate 12 of Allan could have also been provided with a series of triangular shaped spikes 36 cut out from the plate and bent outwardly from the plate as taught by Boyadjian, to at least partially secure the plate to a wall board prior to inserting fasteners 50, 51 through openings in the plate. It would have been obvious because it is suggested by Boyadjian to use triangular shaped tangs 36 to temporarily/partially secure a plate prior to using screws or nails to more permanently secure the plate. The number spikes used (at least four) is a choice of design which would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized the number of spikes chosen could have been varied depending on design choice of the plate and spike size. It would have been nothing other than obvious engineering design practices.

7. Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Applicant's arguments with respect to the teachings of U.S. Patent 1,810,597 to Corwin have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The argument that the examiner has failed to address the limitations of claims 16-18 is not found persuasive. Applicant states that there are no ribs in the Hohmann brick. As noted in the final rejection and above Hohmann provides ribs 144. The bends 144 of the corrugated portions clearly meet the limitations of claims 16-18, as there is a plurality of peaks and valleys, which extend transversely across the tie.

Applicant's argument that Hohmann does not include a pair of spaced apart notches as set forth in claim 25 is persuasive.

Applicant's argument that the Allen patent teaches directly securing the anchor to the wood stud framing F is not persuasive. As noted in the final rejection and above, column 4, lines 14-19, discusses the use of wallboard interposed between the studs and anchors. The argument that it would be difficult to press spikes into wood is not found persuasive as Boyadjian teaches pressing his spikes 36 into a wooden sill plate 24 (column 3, line 14).

The brief failed to address the rejection under 35 U.S.C. 103(a) of Pierson in view of Corwin but did argue the further modification with Moriez et al. was improper

because there is no factual basis for the presumption that it is desirable to use blocks having the particularly shape of Moreiz. This is not found persuasive as Moreiz itself teaches the desirability.

Note that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, U.S. Patent 6,105,332 to Boyadjian is reasonably pertinent to the particularly problem which applicant is concerned with. Namely, temporarily securing a plate with spikes prior to more permanently securing with fasteners such as screws.

Note that the Claim Appendix incorrectly numbers claim 4 as claim 5.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

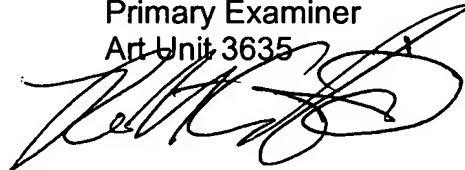
Several plates having both spikes and openings for fasteners are listed on the attached PTO 892 form.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
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A handwritten signature in black ink, appearing to read 'R. Canfield', is written over the printed name and title of the examiner.

03/31/06